

43. The Commission suggests that a public safety transition plan may be funded by public safety agencies migrating to new frequencies and the FCC auctioning the vacated frequencies. Notice at 92. IAFC/IMSA support the use of spectrum auction funds to finance the transition to a new public safety communications environment, and they urge the Commission to seek authority from Congress to use auction proceeds for public safety funding.

44. The administration of public safety spectrum also must be improved. The spectrum allocation and administration process for public safety services was found to be inefficient and too lengthy by the Commission.⁵ Notice at 93. Specifically, the Commission proposes that the frequency coordinator assign operating terms following license grant as compared to the current pre-license coordination system. Notice at 94. IMSA/IAFC oppose a licensing system where a license is issued before operating parameters are identified to the applicant party. Not only will a post license grant coordination system lead to false expectations, but also post license grants are contrary to the FCC's licensing obligations. An FCC license is meaningless if it is issued without operation parameters. Rather, the FCC should adopt and enforce tighter frequency coordination standards, especially for inter-service

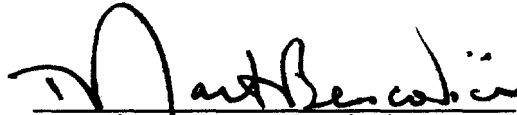
5 The concerns expressed by Senator Gregg in the letter attached as Appendix A support this finding.

coordination, and similarly expedite its own application processing. Particular attention should be paid to Canadian clearances, which currently may run five or more months.

45. As to the Commission's proposal that the frequency coordinator maintain an accurate data base of public safety licenses granted, concerns over the administration of the data base and the funding for such data base must first be resolved. IAFC/IMSA currently commit substantial resources to maintenance of an accurate data base so to be able to render coordination services on an efficient basis.

46. Finally, the Commission reiterates its goal in this proceeding "to create a regulatory environment which fosters competition." Notice at 97. The Commission concludes that the best way to foster competition is to ensure that any rules adopted in this proceeding be technology-neutral. IAFC/IMSA agree that the best way for the Commission to meet its Congressionally mandated goal of fostering competition is to establish technology-neutral rules, i.e., require open architecture. IMSA/IAFC urge the Commission to be technology-neutral in adopting rules in this proceeding and not to impose use of certain equipment or technologies which may favor one manufacturer over another.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici", written over a horizontal line.

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Dated: October 21, 1996

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The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to request your review and comment on the Commission's policies in addressing important public safety communications requirements. My concerns on this issue arise due to the manner in which the State of New Hampshire was treated in a proceeding recently decided by the Wireless Telecommunications Bureau.

On February 24, 1995, I wrote to you regarding the State of New Hampshire's then-pending July 1993 application for authority to construct and operate a new statewide mobile radio system to serve the public safety needs of its citizens. As I understand, due to a shortage of available frequencies in the public safety frequency bands appropriate to function in New Hampshire's topologically diverse and highly forested terrain, the State had requested use of frequencies in a band designated for single-channel common carrier services. The State understood those channels to be available due to the conversion by New England Telephone and Telegraph Company from low capacity, antiquated radio/telephone service to cellular service. In a response issued on your behalf on or about March 23, 1995, Regina M. Keeney, Chief of the Wireless Telecommunications Bureau, assured me that the Commission "is concerned with meeting the unique needs of public safety users of private radio services" and noted that the Commission had initiated various efforts to deal with public safety communications issues. Ms. Keeney advised that the Commission intended to address the State's application "in the near future."

On May 3, 1996, nearly three years after the State had filed its application and more than one year after Ms. Keeney's letter, the Wireless Telecommunications Bureau dismissed the State's application. In so doing, the Bureau did not dispute that the State's application was meant to serve pressing public safety needs. Rather, the Bureau deferred the FCC's need to address these needs to a yet-to-be-issued rulemaking concerning public safety spectrum needs through the year 2010. In the same ruling, the Bureau accepted and approved an application for

APPENDIX A

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commercial use of the involved channels. In doing so, the Bureau rejected the State's challenge to the commercial applicant's compliance with the Commission's rules, based, I am told, on conclusory and unverifiable claims by that applicant.

I understand the Bureau also recently denied a California public safety agency application to use available common carrier frequencies. The Bureau's response to public safety agency requests to secure radio channels in frequency bands appropriate to their operating areas is of great concern, and raises a number of issues concerning FCC policy in this field. Accordingly, I would appreciate your response to the following issues:

1. Whether The Commission's Stated Policies Are Being Followed: In the February 9, 1995, report "Meeting State and Local Government Public Safety Agency Spectrum Needs Through the Year 2010," the Commission stated that it would handle critical public safety spectrum requirements on a case-by-case basis, including use of spectrum allocated for non-public safety services. If the Bureau's policy is to defer public safety requests (such as New Hampshire's and California's) to an ongoing and potentially lengthy rulemaking process, then it would appear that the Bureau may be ignoring or effectively nullifying the Commission's promise of a "case-by-case" standard.

2. Whether The Rulemaking Legitimately Addresses Current Needs: In a related matter, assuming the rulemaking cited to the State provides spectrum in a frequency band suitable to meet the State's needs, a question arises as to when the rulemaking will be completed and when the spectrum will be available to the State as an outgrowth of that proceeding. If the rulemaking's conclusion is years away, then it would appear that more flexibility in current waiver requests may be necessary to address situations arising today.

3. Whether The Commission Is Sensitive To The Special Concerns Of Public Agencies: New Hampshire applied for a rule waiver for its public safety system in July of 1993, yet the Bureau just ruled in May of 1996. This delay has caused budget planning, contracting and appropriation headaches for the State, to say the least. If this is the standard time frame for a rule waiver application, then it would appear that special consideration should perhaps be given to state governments and other public entities to more swiftly process their applications.

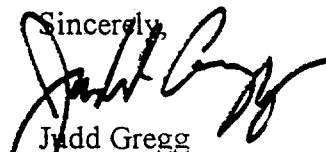
4. Whether The Bureau Is Biased Against Public Applicants: It is my understanding that the commercial applicant involved in the New Hampshire proceeding did not voluntarily respond to the State's challenge as to whether the competing applications were properly prepared. Subsequently, more than a year after those questions were raised, the Bureau specifically asked for a response. The Bureau did not ask New Hampshire for any additional responses, but then commented on deficiencies in the State's application in its ruling. This would appear to raise a question of uneven treatment.

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5. Whether The Commission Has Standards On Financial Burdens: The Bureau dismissed the State's argument that the cost of constructing a system in an alternative frequency band was prohibitively high, twice the construction cost plus substantial additional annual operating costs, on the grounds that financial considerations do not constitute valid grounds for grant of the requested waiver. I understand that the Commission, in other waiver situations, has taken cognizance of the financial burden of alternative frequency bands. This would appear to raise a question as to whether the Commission has any standards or guidelines in this regard, and whether such standards account for the limits that public agencies confront as taxpayer-financed institutions.

As you know, the State of New Hampshire has appealed the Bureau's ruling. In addition to the general policy matters discussed above, it would be greatly appreciated if you could inform me of the time frame in which the Commission will rule upon the State's appeal.

Thank you in advance for your attention to this matter.

Sincerely,

Judd Gregg
U.S. Senator

JG/ss

cc: Martin W. Bercovici, Attorney for State of New Hampshire
Audrey P. Rasmussen, Attorney for McCormick & Jacobson